

103D CONGRESS
2D SESSION

S. 1782

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 1994

Referred to the Committee on Government Operations

AN ACT

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Electronic Freedom
5 of Information Improvement Act of 1994".

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) the purpose of the Freedom of Information
4 Act is to require agencies of the Federal Govern-
5 ment to make certain agency information available
6 for public inspection and copying and to establish
7 and enable enforcement of the right of any person
8 to obtain access to the records of such agencies
9 (subject to statutory exemptions) for any public or
10 private purpose;

11 (2) since the enactment of the Freedom of In-
12 formation Act in 1966, and the amendments enacted
13 in 1974 and 1986, the Freedom of Information Act
14 has been a valuable means through which any per-
15 son can learn how the Federal Government operates;

16 (3) the Freedom of Information Act has led to
17 the disclosure of waste, fraud, abuse, and wrong-
18 doing in the Federal Government;

19 (4) the Freedom of Information Act has led to
20 the identification of unsafe consumer products,
21 harmful drugs, and serious health hazards;

22 (5) Government agencies increasingly use com-
23 puters to conduct agency business and to store pub-
24 licly valuable agency records and information; and

1 (6) Government agencies should use new tech-
2 nology to enhance public access to agency records
3 and information.

4 (b) PURPOSES.—The purposes of this Act are to—

5 (1) foster democracy by ensuring public access
6 to agency records and information;

7 (2) improve public access to agency records and
8 information;

9 (3) ensure agency compliance with statutory
10 time limits; and

11 (4) maximize the usefulness of agency records
12 and information collected, maintained, used, re-
13 tained, and disseminated by the Federal Govern-
14 ment.

15 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

16 Section 552(a)(1) of title 5, United States Code, is
17 amended—

18 (1) in the first sentence by inserting “by com-
19 puter telecommunications, or if computer tele-
20 communications means are not available, by other
21 electronic means,” after “Federal Register”;

22 (2) by striking out “and” at the end of sub-
23 paragraph (D);

24 (3) by redesignating subparagraph (E) as sub-
25 paragraph (F); and

1 (4) by inserting after subparagraph (D) the fol-
2 lowing new subparagraph:

3 “(E) a complete list of all statutes that the
4 agency head or general counsel relies upon to au-
5 thorize the agency to withhold information under
6 subsection (b)(3) of this section, together with a spe-
7 cific description of the scope of the information cov-
8 ered; and”.

9 **SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FOR-**
10 **MAT.**

11 Section 552(a)(2) of title 5, United States Code, is
12 amended—

13 (1) in the first sentence by inserting “including,
14 within 1 year after the date of the enactment of the
15 Electronic Freedom of Information Improvement Act
16 of 1994, by computer telecommunications, or if com-
17 puter telecommunications means are not available,
18 by other electronic means,” after “copying”;

19 (2) in subparagraph (B) by striking out “and”
20 after the semicolon;

21 (3) in subparagraph (C) by inserting “and”
22 after the semicolon;

23 (4) by adding after subparagraph (C) the fol-
24 lowing new subparagraphs:

“(D) an index of all major information systems containing agency records regardless of form or format unless such an index is provided as otherwise required by law; and

“(E) a description of any new major information system with a statement of how such system shall enhance agency operations under this section;”;
and

(5) in the third sentence by inserting “and the extent of such deletion shall be indicated on the portion of the record which is made available or published at the place in the record where such deletion was made” after “explained fully in writing”.

SEC. 5. LIST OF RECORDS MADE AVAILABLE TO THE PUBLIC AND HONORING FORMAT REQUESTS.

Section 552(a)(3) of title 5, United States Code, is amended by—

(1) inserting “(A)” after “(3)”;

(2) striking out “(A) reasonably” and inserting in lieu thereof “(i) reasonably”;

(3) striking out “(B)” and inserting in lieu thereof “(ii)”;

(4) adding at the end thereof the following new subparagraphs:

1 “(B) A list of all records which are made available
2 to any person under this paragraph shall be made avail-
3 able for public inspection and copying as provided under
4 paragraph (2) of this subsection. Copies of all such
5 records, regardless of form or format, which because of
6 the nature of their subject matter, have become or are
7 likely to become the subject of subsequent requests under
8 this paragraph for substantially the same records, shall
9 be made available for inspection and copying as provided
10 under paragraph (2) of this subsection.

11 “(C) An agency shall, as requested by any person,
12 provide records in any form or format in which such
13 records are maintained by that agency.

14 “(D) An agency shall make reasonable efforts to pro-
15 vide records in the form or format requested by any per-
16 son, including in an electronic form or format, even where
17 such records are not usually maintained but are available
18 in such form or format.”.

19 **SEC. 6. DELAYS.**

20 (a) FEES.—Section 552(a)(4)(A) of title 5, United
21 States Code, is amended by adding at the end thereof the
22 following new clause:

23 “(viii) If at an agency’s request, the Comptroller Gen-
24 eral determines that the agency annually has either pro-
25 vided responsive documents or denied requests in substan-

1 tial compliance with the requirements of paragraph
2 (6)(A), one-half of the fees collected under this section
3 shall be credited to the collecting agency and expended to
4 offset the costs of complying with this section through
5 staff development and acquisition of additional request
6 processing resources. The remaining fees collected under
7 this section shall be remitted to the Treasury as general
8 funds or miscellaneous receipts.”.

9 (b) PAYMENT OF THE EXPENSES OF THE PERSON
10 MAKING A REQUEST.—Section 552(a)(4)(E) of title 5,
11 United States Code, is amended by adding at the end
12 thereof the following new sentence: “The court may assess
13 against the United States all out-of-pocket expenses in-
14 curred by the person making a request, and reasonable
15 attorney fees incurred in the administrative process, in
16 any case in which the agency has failed to comply with
17 the time limit provisions of paragraph (6) of this sub-
18 section.”.

19 (c) DEMONSTRATION OF CIRCUMSTANCES FOR
20 DELAY.—Section 552(a)(4)(E) of title 5, United States
21 Code, is further amended—

22 (1) by inserting “(i)” after “(E)”; and

23 (2) by adding at the end thereof the following
24 new clause:

1 “(ii) Any agency not in compliance with the time lim-
2 its set forth in this subsection shall demonstrate to a court
3 that the delay is warranted under the circumstances set
4 forth under paragraph (6) (B) or (C) of this subsection.”.

5 (d) PERIOD FOR AGENCY DECISION TO COMPLY
6 WITH REQUEST.—Section 552(a)(6)(A)(i) is amended by
7 striking out “ten days” and inserting in lieu thereof
8 “twenty days”.

9 (e) AGENCY BACKLOGS.—Section 552(a)(6)(C) of
10 title 5, United States Code, is amended by inserting after
11 the second sentence the following: “As used in this sub-
12 paragraph, ‘exceptional circumstances’ shall be unforeseen
13 and shall not include delays that result from a predictable
14 workload, including any ongoing agency backlog, in the
15 ordinary course of processing requests for records.”.

16 (f) NOTIFICATION OF DENIAL.—The fourth sentence
17 of section 552(a)(6)(C) of title 5, United States Code, is
18 amended to read: “Any notification of any full or partial
19 denial of any request for records under this subsection
20 shall set forth the names and titles or positions of each
21 person responsible for the denial of such request and the
22 total number of denied records and pages considered by
23 the agency to have been responsive to the request.”.

24 (g) MULTITRACK FIFO PROCESSING AND EXPE-
25 DITED ACCESS.—Section 552(a)(6) of title 5, United

1 States Code, is amended by adding at the end thereof the
2 following new subparagraphs:

3 “(D)(i) Each agency shall adopt a first-in, first-out
4 (hereafter in this subparagraph referred to as FIFO)
5 processing policy in determining the order in which re-
6 quests are processed. The agency may establish separate
7 processing tracks for simple and complex requests using
8 FIFO processing within each track.

9 “(ii) For purposes of such a multitrack system—

10 “(I) a simple request shall be a request requir-
11 ing 10 days or less to make a determination on
12 whether to comply with such a request; and

13 “(II) a complex request shall be a request re-
14 quiring more than 10 days to make a determination
15 on whether to comply with such a request.

16 “(iii) A multitrack system shall not negate a claim
17 of due diligence under subparagraph (C), if FIFO process-
18 ing within each track is maintained and the agency can
19 show that it has reasonably allocated resources to handle
20 the processing for each track.

21 “(E)(i) Each agency shall promulgate regulations,
22 pursuant to notice and receipt of public comment, provid-
23 ing that upon receipt of a request for expedited access to
24 records and a showing by the person making such request
25 of a compelling need for expedited access to records, the

1 agency shall determine within 5 days (excepting Satur-
2 days, Sundays, and legal public holidays) after the receipt
3 of such a request, whether to comply with such request.
4 No more than one day after making such determination
5 the agency shall notify the person making a request for
6 expedited access of such determination, the reasons there-
7 for, and of the right to appeal to the head of the agency.
8 A request for records to which the agency has granted ex-
9 pedited access shall be processed as soon as practicable.
10 A request for records to which the agency has denied expe-
11 dited access shall be processed within the time limits
12 under paragraph (6) of this subsection.

13 “(ii) A person whose request for expedited access has
14 not been decided within 5 days of its receipt by the agency
15 or has been denied shall be required to exhaust adminis-
16 trative remedies. A request for expedited access which has
17 not been decided may be appealed to the head of the agen-
18 cy within 7 days (excepting Saturdays, Sundays, and legal
19 public holidays) after its receipt by the agency. A request
20 for expedited access that has been denied by the agency
21 may be appealed to the head of the agency within 2 days
22 (excepting Saturdays, Sundays, and legal public holidays)
23 after the person making such request receives notice of
24 the agency’s denial. If an agency head has denied, af-
25 firmed a denial, or failed to respond to a timely appeal

1 of a request for expedited access, a court which would have
2 jurisdiction of an action under paragraph (4)(B) of this
3 subsection may, upon complaint, require the agency to
4 show cause why the request for expedited access should
5 not be granted, except that such review shall be limited
6 to the record before the agency.

7 “(iii) The burden of demonstrating a compelling need
8 by a person making a request for expedited access may
9 be met by a showing, which such person certifies under
10 penalty of perjury to be true and correct to the best of
11 such person’s knowledge and belief, that failure to obtain
12 the requested records within the timeframe for expedited
13 access under this paragraph would—

14 “(I) threaten an individual’s life or safety;

15 “(II) result in the loss of substantial due proc-
16 ess rights and the information sought is not other-
17 wise available in a timely fashion; or

18 “(III) affect public assessment of the nature
19 and propriety of actual or alleged governmental ac-
20 tions that are the subject of widespread, contem-
21 poraneous media coverage.”.

22 **SEC. 7. COMPUTER REDACTION.**

23 Section 552(b) of title 5, United States Code, is
24 amended by inserting before the period in the sentence
25 following paragraph (9): “, and the extent of such deletion

1 shall be indicated on the released portion of the record
2 at the place in the record where such deletion was made”.

3 **SEC. 8. DEFINITIONS.**

4 Section 552(f) of title 5, United States Code, is
5 amended to read as follows:

6 “(f) For purposes of this section—

7 “(1) the term ‘agency’ as defined in section
8 551(1) of this title includes any executive depart-
9 ment, military department, Government corporation,
10 Government controlled corporation, or other estab-
11 lishment in the executive branch of the Government
12 (including the Executive Office of the President), or
13 any independent regulatory agency;

14 “(2) the term ‘record’ means all books, papers,
15 maps, photographs, machine-readable materials, or
16 other information or documentary materials, regard-
17 less of physical form or characteristics; and

18 “(3) the term ‘search’ means a manual or auto-
19 mated review of agency records that is conducted for
20 the purpose of locating those records which are re-
21 sponsive to a request under subsection (a)(3)(A) of
22 this section.”.

Passed the Senate August 25 (legislative day, Au-
gust 18), 1994.

Attest:

MARTHA S. POPE,
Secretary.